

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 3

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2007

AN ACT

RELATING TO CONTROLLED SUBSTANCES; ENACTING THE CLANDESTINE
DRUG LABORATORY ACT; ADDRESSING THE MANUFACTURE OF
METHAMPHETAMINE; PROVIDING FOR NOTICE, HEARING, A CLANDESTINE
DRUG LABORATORY LIST, REMEDIATION, LOANS AND RESTITUTION;
IMPOSING PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Clandestine Drug Laboratory Act".

Section 2. DEFINITIONS.--As used in the Clandestine Drug
Laboratory Act:

A. "clandestine drug laboratory" means a site,
including personal and real property, structures, mobile homes,
vehicles, recreational vehicles, equipment and all proximate
areas, where:

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1 (1) the manufacture of methamphetamine is
2 taking place or has taken place or an attempt is being made or
3 has been made to manufacture methamphetamine; or

4 (2) chemicals used in the manufacture of
5 methamphetamine or waste materials produced in the manufacture
6 of methamphetamine are located or have been located;

7 B. "law enforcement agency" means a police or
8 public safety department administered by the state or a
9 political subdivision, or a person contracting for or on behalf
10 of a police or public safety department, where the employees
11 are responsible for the prevention and detection of crime and
12 the enforcement of the penal, traffic or highway laws of this
13 state;

14 C. "manufacture" means the production, preparation,
15 compounding, conversion or processing of methamphetamine by
16 extraction from substances of natural origin or independently
17 by means of chemical synthesis, but does not include the
18 preparation or compounding of methamphetamine by:

19 (1) a practitioner, licensed or certified to
20 prescribe and administer drugs that are subject to the
21 Controlled Substances Act or the rules promulgated pursuant to
22 that act, as an incident to the practitioner's administration
23 or dispensing of a controlled substance in the course of the
24 practitioner's professional practice; or

25 (2) a practitioner or the practitioner's agent

1 acting under the practitioner's supervision, or a scientific
2 investigator registered to conduct research with controlled
3 substances in the course of the scientific investigator's
4 professional practice or the scientific investigator's agent
5 acting under the scientific investigator's supervision, for or
6 as an incident to research, teaching or chemical analysis but
7 not for sale;

8 D. "methamphetamine" has the same meaning as
9 prescribed in Section 30-31-7 NMSA 1978 and includes any of the
10 precursor chemicals, regulated chemicals or other substances or
11 equipment used in the unlawful manufacture of methamphetamine
12 and any of its derivatives;

13 E. "mobile home" means a single-family dwelling
14 built on a permanent chassis designed for a long-term
15 residential occupancy and containing complete electrical,
16 plumbing and sanitary facilities designed to be installed in a
17 permanent or semipermanent manner with or without a permanent
18 foundation and that is capable of being towed over public
19 highways as a unit or in sections by a special permit;

20 F. "recreational vehicle" means a vehicle with a
21 camping body that has its own motive power or is affixed to or
22 is towed by another vehicle and includes motor homes, travel
23 trailers and truck campers;

24 G. "remediation" means the cleanup, removal or
25 destruction of chemicals or contaminants at a clandestine drug

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1 laboratory to conform with applicable department of environment
2 rules and any action, including the destruction of property,
3 necessary to investigate, prevent, minimize or mitigate damages
4 to the public health or to the environment that may result from
5 the chemicals or contaminants; and

6 H. "vehicle" means a device in, upon or by which a
7 person or property may be transported or towed upon a street or
8 highway, propelled by a power other than human power, including
9 diesel fuel, gasoline, compressed natural gas, electricity or a
10 combination of these, designed to travel along the ground by
11 use of wheels, treads, runners or slides, and includes
12 automobiles, trucks, trailers of any kind, motorcycles, off-
13 highway motor vehicles, tractors, buggies or wagons.

14 Section 3. CLANDESTINE DRUG LABORATORY--PROCEDURES UPON
15 DISCOVERY.--

16 A. Upon identification of a clandestine drug
17 laboratory by a law enforcement agency, the agency shall at the
18 time of identification:

19 (1) pursuant to law, seize and secure the
20 clandestine drug laboratory from improper entry and order the
21 removal of persons from the laboratory;

22 (2) notify the department of public safety of
23 the existence of the clandestine drug laboratory;

24 (3) notify the department of environment of
25 the existence of the clandestine drug laboratory; and

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1 (4) post a notice of contamination in a
2 conspicuous place at the clandestine drug laboratory.

3 B. Within seven days after a request for a hearing
4 regarding a seizure conducted pursuant to Subsection A of this
5 section, the law enforcement agency shall hold a hearing during
6 which a person affected by the seizure may challenge whether
7 probable cause existed for the seizure. The hearing shall be
8 conducted by a hearing officer appointed by the agency, and the
9 hearing officer shall render a decision immediately upon the
10 conclusion of the hearing. The decision of the hearing officer
11 may be appealed to the district court in the county where the
12 seizure took place.

13 Section 4. NOTICE OF CONTAMINATION TO OWNER, LANDLORD,
14 MANAGER OR OCCUPANT.--Upon identification of a clandestine drug
15 laboratory by a law enforcement agency, that agency shall:

16 A. deliver a copy of the notice of contamination
17 to the owner, landlord, manager or occupant of the clandestine
18 drug laboratory if the owner, landlord, manager or occupant or,
19 if the clandestine drug laboratory is a mobile home or
20 recreational vehicle, the owner or manager of a mobile home or
21 recreational vehicle space-rental or space-purchase park where
22 the clandestine drug laboratory may be located, is present at
23 the time of seizure of the clandestine drug laboratory;

24 B. send the notice of contamination within seven
25 business days after seizure of the clandestine drug laboratory

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1 by certified mail, return receipt requested, to the owner at
2 the owner's last known address contained in records of the
3 county or municipality where the clandestine drug laboratory is
4 located if the owner of the clandestine drug laboratory or, if
5 the clandestine drug laboratory is a mobile home or
6 recreational vehicle, the owner of a mobile home or
7 recreational vehicle space-rental or space-purchase park where
8 the clandestine drug laboratory may be located, is not
9 personally provided a copy of the notice of contamination
10 pursuant to Subsection A of this section. Proof of mailing
11 shall be considered notice to the owner;

12 C. document proof of posting the notice of
13 contamination pursuant to Subsection D of Section 3 of the
14 Clandestine Drug Laboratory Act, which proof of posting shall
15 be considered notice to the owner if the owner of the
16 clandestine drug laboratory cannot be identified; and

17 D. deliver a copy of the notice of contamination to
18 the department of environment within seven business days after
19 seizure of the clandestine drug laboratory.

20 Section 5. NOTICE OF CONTAMINATION.--The notice of
21 contamination required by Sections 3 and 4 of the Clandestine
22 Drug Laboratory Act shall contain:

23 A. the word "WARNING" in large bold type at the top
24 and bottom of the notice;

25 B. a statement that a clandestine drug laboratory

1 was seized;

2 C. the date of the seizure;

3 D. the address or location of the clandestine drug
4 laboratory, including the identification of structures or
5 vehicles and, if known, a structure, room or apartment number
6 or a vehicle registration or vehicle identification number;

7 E. the name of the law enforcement agency that
8 seized the clandestine drug laboratory and that agency's
9 telephone number;

10 F. a statement that hazardous substances, toxic
11 chemicals or other residual contamination from operation of the
12 clandestine drug laboratory may still be present;

13 G. a statement that it is a misdemeanor for a
14 person other than the owner, the owner's agent, a lessee or
15 renter or a transferee or assignee of the owner to enter,
16 occupy or use the clandestine drug laboratory or otherwise
17 knowingly and intentionally violate the provisions of the
18 notice of contamination until remediation of the clandestine
19 drug laboratory has taken place in accordance with department
20 of environment rules;

21 H. a statement that it is a misdemeanor to
22 knowingly and intentionally disturb the notice of contamination
23 posted at the clandestine drug laboratory;

24 I. a statement that the owner of the property shall
25 remediate the contaminated portion of the clandestine drug

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1 laboratory in compliance with department of environment rules;

2 J. a statement that failure of the owner to
3 remediate the contaminated portion of the clandestine drug
4 laboratory in compliance with department of environment rules
5 may result in a fine of up to five thousand dollars (\$5,000);

6 K. contact information for the department of
7 environment;

8 L. a statement that until remediation is complete,
9 selling, leasing, renting, loaning, assigning, exchanging or
10 otherwise transferring the clandestine drug laboratory without
11 providing notice of its existence as required by Section 11 of
12 the Clandestine Drug Laboratory Act shall void the sale, lease,
13 rental, loan, assignment, exchange or other transfer and may
14 result in a fine of up to one thousand dollars (\$1,000); and

15 M. a statement that a person affected is entitled
16 to request a hearing from the law enforcement agency, which can
17 be appealed to district court pursuant to the Clandestine Drug
18 Laboratory Act.

19 Section 6. DEPARTMENT OF ENVIRONMENT--CLANDESTINE DRUG
20 LABORATORY LIST--RULES.--The department of environment shall:

21 A. maintain a list of clandestine drug laboratories
22 on the department's web site based on information received from
23 law enforcement agencies; and

24 B. promulgate rules for assessment and remediation
25 of residual contamination from chemicals or contaminants

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1 resulting from a clandestine drug laboratory.

2 Section 7. OWNER RESPONSIBLE FOR REMEDIATION--NOTICE
3 VACATED.--

4 A. The owner of a clandestine drug laboratory is
5 responsible for its remediation in compliance with department
6 of environment rules.

7 B. Upon determination of the department of
8 environment that a clandestine drug laboratory has been
9 remediated in accordance with its rules, or that no remediation
10 is required, the department shall:

11 (1) remove the clandestine drug laboratory
12 from its web site list of clandestine drug laboratories; and

13 (2) notify the law enforcement agency that
14 seized the clandestine drug laboratory to remove the notice of
15 contamination from the former clandestine drug laboratory,
16 which the law enforcement agency shall do within three business
17 days of being notified by the department of environment.

18 Section 8. REMEDIATION BY COUNTY OR MUNICIPALITY--LOAN.--

19 A. If the owner of a clandestine drug laboratory
20 refuses or fails to engage in remediation of the clandestine
21 drug laboratory as established by the rules of the department
22 of environment for remediation, or the owner or lien-holder of
23 a clandestine drug laboratory that is a mobile home or a
24 recreational vehicle has failed to remove the mobile home or
25 recreational vehicle pursuant to Section 10 of the Clandestine

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1 Drug Laboratory Act, the county or municipality where the
2 clandestine drug laboratory is located may remediate or seek a
3 court order requiring the owner to remediate the clandestine
4 drug laboratory as required by Section 7 of the Clandestine
5 Drug Laboratory Act. If the county or municipality is unable
6 to locate the owner within thirty days after the issuance of
7 the notice of contamination, the county or municipality may
8 proceed with remediation.

9 B. If the county or municipality in which the
10 clandestine drug laboratory is located remediates pursuant to
11 Subsection A of this section, the owner of the clandestine drug
12 laboratory shall pay to the county or municipality all costs
13 related to such remediation. If the owner refuses or fails to
14 pay the county or municipality for its costs of remediation,
15 the county or municipality shall be entitled to file a lien
16 against the clandestine drug laboratory for the costs related
17 to remediation and bring legal action against the owner for
18 those remediation costs.

19 C. Not including a vehicle other than a mobile home
20 or a recreational vehicle, if the county or municipality in
21 which the clandestine drug laboratory is located remediates
22 pursuant to Subsection A of this section, the county or
23 municipality may apply for a loan from the New Mexico finance
24 authority, pursuant to the requirements and procedures of the
25 authority, to cover the costs of remediation.

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1 Section 9. RESTITUTION.--

2 A. A court may require a person convicted of a
3 crime involving the use, manufacture, production or
4 distribution of methamphetamine at a clandestine drug
5 laboratory to pay restitution to a public entity that took any
6 action under the Clandestine Drug Laboratory Act. The
7 restitution ordered may cover the reasonable costs of the
8 actions taken.

9 B. In addition to the restitution authorized in
10 Subsection A of this section, a court may require a person
11 convicted of a crime involving the use, manufacture, production
12 or distribution of methamphetamine at a clandestine drug
13 laboratory to pay restitution to the owner of a clandestine
14 drug laboratory who incurred remediation and other costs
15 because of the crime.

16 Section 10. MOBILE HOME OR RECREATIONAL VEHICLE.--If a
17 clandestine drug laboratory is a mobile home or a recreational
18 vehicle in a space-rental or space-purchase park, and has not
19 been remediated pursuant to Section 7 of the Clandestine Drug
20 Laboratory Act, the park owner shall request the owner or lien-
21 holder of the mobile home or recreational vehicle to remove it
22 from the park within thirty days, unless the mobile home or
23 recreational vehicle belongs to the park owner. If the mobile
24 home or recreational vehicle is not removed within thirty days,
25 the county or municipality where the mobile home or

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1 recreational vehicle is located shall proceed pursuant to
2 Section 8 of the Clandestine Drug Laboratory Act.

3 Section 11. NOTICE BY OWNER TO TRANSFEREE.--

4 A. Until remediation is completed, an owner shall
5 not sell, lease, rent, loan, assign, exchange or otherwise
6 transfer the clandestine drug laboratory unless the owner:

7 (1) provides written notice to the purchaser,
8 lessee, renter, borrower, assignee, exchange partner or other
9 transferee, with a copy to the department of environment, of
10 the existence of the clandestine drug laboratory; and

11 (2) receives a written acknowledgment, and
12 provides a copy to the department of environment, that the
13 notice was received by the purchaser, lessee, renter, borrower,
14 assignee, exchange partner or other transferee.

15 B. A formal or informal purchase and sale, lease,
16 rental, loan, assignment, exchange or transfer agreement or
17 contract shall be void if notice is not provided pursuant to
18 this section and the owner shall be liable for any harm
19 resulting from the owner's failure to comply with the
20 requirements of this section.

21 Section 12. CIVIL PENALTIES.--

22 A. Whenever on the basis of any information the
23 secretary of environment determines that an owner has failed to
24 comply with the provisions of:

25 (1) Section 7 of the Clandestine Drug

1 Laboratory Act regarding remediation in compliance with
2 department of environment rules, the secretary of environment
3 may issue an order imposing on the owner a civil penalty in an
4 amount not to exceed five thousand dollars (\$5,000), which
5 amount may be deposited in the state treasury and credited to
6 the hazardous waste emergency fund; or

7 (2) Section 11 of the Clandestine Drug

8 Laboratory Act regarding notice to a purchaser, lessee, renter,
9 borrower, assignee, exchange partner or other transferee, the
10 secretary of environment may issue an order imposing on the
11 owner a civil penalty in an amount not to exceed one thousand
12 dollars (\$1,000), which amount shall be deposited in the state
13 treasury and credited to the hazardous waste emergency fund.

14 B. An order issued pursuant to Subsection A of this
15 section shall become final unless, no later than thirty days
16 after the order is served, the owner named in the order submits
17 a written request to the secretary of environment for a public
18 hearing. Upon that request, the secretary of environment shall
19 promptly conduct a public hearing. The secretary of
20 environment shall appoint an independent hearing officer to
21 preside over the public hearing. The hearing officer shall
22 make and preserve a complete record of the proceedings and
23 forward recommendations based on the record to the secretary of
24 environment, who shall make the final decision. In connection
25 with a hearing pursuant to this section, the secretary of

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1 environment may issue subpoenas for the attendance and
2 testimony of witnesses and the production of relevant papers,
3 books and documents and may promulgate rules for discovery
4 procedures. A final decision of the secretary of environment
5 pursuant to this section may be appealed to the district court
6 pursuant to Section 39-3-1.1 NMSA 1978.

7 Section 13. CRIMINAL PENALTIES.--

8 A. A person who knowingly and intentionally
9 violates a notice of contamination issued by a law enforcement
10 agency pursuant to the Clandestine Drug Laboratory Act is
11 guilty of a misdemeanor and shall be sentenced in accordance
12 with the provisions of Section 31-19-1 NMSA 1978.

13 B. A person who knowingly and intentionally
14 disturbs a notice of contamination posted on a clandestine drug
15 laboratory is guilty of a misdemeanor and shall be sentenced in
16 accordance with the provisions of Section 31-19-1 NMSA 1978.

17 Section 14. PREEMPTION.--After the effective date of the
18 promulgation of enforceable rules by the department of
19 environment pursuant to the Clandestine Drug Laboratory Act, no
20 county or municipality, including a home-rule municipality that
21 has adopted a charter pursuant to Article 10, Section 6 of the
22 constitution of New Mexico, shall adopt or enforce an ordinance
23 or resolution regarding the subject matter of the Clandestine
24 Drug Laboratory Act.

25 Section 15. EFFECTIVE DATE.--The effective date of the
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1 provisions of this act is July 1, 2007.

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